

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE**

TRAVIS AND JESSICA FRITZ As Third Party Beneficiaries of LAXMIJI, LLC individually and LAXMIJI, LLC d/b/a MOUNTAIN VISTA INN & SUITES, BHARAT PATEL individually and BHARAT PATEL d/b/a MOUNTAIN VISTA INN & SUITES, JAGRUTI PATEL,)	
		Docket No. 3:17-CV-00433
Plaintiffs,)	CHIEF DISTRICT JUDGE VARLAN MAGISTRATE JUDGE GUYTON
)
v.)	
)
ST. PAUL FIRE AND MARINE INSURANCE COMPANY,)	
)
Defendant.)	

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

COMES NOW St. Paul Fire & Marine Insurance Company (“St. Paul”), by and through undersigned counsel, and submits this Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. St. Paul would show that there is no genuine issue of material fact and there is no coverage or indemnity owed on the consent judgment Plaintiffs obtained in state court, and as such, St. Paul is entitled to judgment as a matter of law.

As is more fully discussed in the supporting Memorandum filed contemporaneously herewith, St. Paul is entitled to summary judgment on the one count against it for Breach of Contract. First, St. Paul had no duties to the insured under the policy because the insured failed to provide notice to St. Paul of the claim and underlying lawsuit pursuant to the policy’s terms. Second, the consent judgment on which the Plaintiffs seek to recover was entered into by the insured in violation of the Policy’s terms and violates Tennessee’s statutory caps on

noneconomic damages, and thus is unenforceable against St. Paul. Third, St. Paul had no duty to defend or indemnify as to the Plaintiffs' underlying claims for carbon monoxide poisoning because of the policy's pollution exclusion.

In support of this Motion, St. Paul relies on the arguments and authorities set forth in the supporting Memorandum, as well as its contemporaneously filed Statement of Undisputed Facts.

WHEREFORE, PREMISES CONSIDERED, St. Paul respectfully requests that the Court grant this Motion for Summary Judgment on the breach of contract claim in favor of St. Paul, and dismiss this action with prejudice and with costs adjudged against Plaintiffs.

Respectfully submitted this 3rd day of April, 2019.

s/ Amy Worrell Sterling
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CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing has been served upon all counsel of record in this cause electronically via the Court's ECF system on this the 3rd day of April, 2019.

s/ Amy Worrell Sterling